

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**PABLO DIAZ,**

**Plaintiff,**

**v.**

**JODI STORY, et al.,**

**Defendants.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Case No. 3:14-cv-00533-JPG-PMF**

**REPORT AND RECOMMENDATION**

**FRAZIER, Magistrate Judge:**

Before the Court is defendant Jodi Story's Motion to Dismiss for Lack of Prosecution (Doc. 27). Plaintiff Pablo Diaz initiated this lawsuit on May 9, 2014 while he was an inmate at Big Muddy River Correctional Center. He was then released from prison in November of 2014. Since his release, Diaz has not communicated with defense counsel or filed any documents with the Court. Defense counsel's attempts at reaching Diaz have been unsuccessful. On June 30, 2015 the defendant filed the motion to dismiss. Diaz did not respond to the motion. On August 10, 2015 the Court issued an Order to Show Cause (Doc. 28) as to why this case should not be dismissed for lack of prosecution. Diaz again declined to respond.

The defendant seeks to dismiss this case for lack of prosecution. Prior to dismissing a case for lack of prosecution, a court must generally provide an explicit warning to the non-complying party. *See Ball v. City of Chicago*, 2 F.3d 752, 755 (7th Cir. 1993); *Kasalo v. Harris & Harris, Ltd.*, 656 F.3d 557, 562 (7th Cir. 2011) ("we have required courts to warn a plaintiff that she is on thin ice before the case is thrown out"). Additionally, a court must consider less severe sanctions before deciding to dismiss. *Johnson v. Chicago Bd. of Educ.*, 718 F.3d 731, 733 (7th Cir. 2013). "[A] district court that dismisses a suit immediately after the first problem,

without exploring other options or saying why they would not be fruitful, commits a legal error.”

*Id.*

In the present case, the Court has been patient with Diaz. Diaz was provided ample time to respond to the defendant’s motion to dismiss but he declined to do so. The Court then warned Diaz in the Order to Show Cause that this case may be dismissed for lack of prosecution. Diaz again failed to respond. It appears that Diaz is not interested in litigating his conditions of confinement lawsuit now that he is no longer incarcerated. Because Diaz has abandoned his case, other less severe sanctions would have little or no effect. It is therefore RECOMMENDED that the defendant’s motion (Doc. 27) be GRANTED and that this case be dismissed for lack of prosecution.

**SO RECOMMENDED.**

**DATED: September 14, 2015.**

**s/ Philip M. Frazier**

**PHILIP M. FRAZIER**

**UNITED STATES MAGISTRATE JUDGE**